Arizona Supreme Court Commission on Victims in the Courts

May 20, 2011 Meeting Agenda 1501 W. Washington St. Phoenix, AZ 85007 State Courts Building, Conference Room 119 Conference Phone Number: 602-452-3193 x1112

Call to Order

10:00 a.m. Announcements

Hon. Ron Reinstein, Chair

Outgoing Member Appreciation and Welcome New Members

Supreme Court Opinion Morehart/Duffy v. Barton

Approval of February 2011 Meeting Minutes**

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10:15 a.m. APAAC/Victim Identification Update Hon. Ron Reinstein/ Ms. Elizabeth Ortiz

New Business

10:20 a.m. Victim notification and self-surrender Mr. Patrick Scott

10:30 a.m. Psychiatric Review Board Information Hon. Ron Reinstein

10:40 a.m. Restitution/Financial Recovery Project Hon. Ron Reinstein

11:00 a.m. Legislative Update Mr. Jerry Landau

Workgroup Updates

11:15 a.m. Restitution Workgroup Mr. Dan Levey

Call to the Public/Adjourn

Lunch

Workgroups are NOT scheduled to meet.

For any item on the agenda, the Committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration § 1-202. Please contact Carol Mitchell at (602) 452-3965 with any questions concerning this agenda. Persons with a disability may request a reasonable accommodation by contacting Jerri Medina at (602) 452-3647. Requests should be made as early as possible to allow time to arrange for the accommodation.

^{**}Anticipated Voting items

Commission on Victims in the Courts

Friday, May 20, 2011 Final - Minutes

10:00 a.m. to 12:00 p.m. State Courts Building 1501 W. Washington Phoenix, AZ 85007 Conference Room 119 A&B

Members Present:

Hon. Ronald Reinstein (Chair)

Mr. James J. Belanger

Mr. Michael Breeze

Dr. Kathryn Coffman

Ms. Shelly Corzo

Ms. Karen Duffy

Cpt. Larry Farnsworth

Ms. Leslie James

Mr. Dan Levey

Hon. Evelyn Marez

Ms. Pam Moreton

Ms. Elizabeth Ortiz

Mr. Doug Pilcher

Mr. David Sanders

Hon. Richard Weiss

Ms. Daisy Flores (telephonically)

Hon. Antonio Riojas, Jr. (telephonically)

Hon. Warren Granville

(Hon. Douglas Rayes proxy)

Presenters/Guests:

Mr. Patrick Scott

Mr. Jerry Landau

Staff:

Ms. Carol Mitchell Ms. Jerri Medina

Members Absent:

Mr. Michael Branham

Hon. Peter Cahill

Ms. Sydney Davis

Ms. JoAnn Del Colle

Hon. Elizabeth Finn

Ms. Keli Luther

Hon. Anna Montoya-Paez

Hon. William O'Neil

I. Regular Business

A. Welcome and Opening Remarks

The May 20, 2011 meeting of the Commission on Victims in the Courts (COVIC) was called to order by Chair, Honorable Ronald Reinstein, at 10:07 a.m.

Judge Reinstein made the following announcements:

- Welcomed new members and presented re-appointed members with letters from Chief Justice.
- COVIC Member, Leslie James announced that her sister's murderers' conviction
 was recently upheld by the Supreme Court. She acknowledged the judges in
 her trial case and victim notification systems. This was a cold case that DNA
 evidence provided the key to conviction.

B. Supreme Court decision:

Judge Reinstein provided the Supreme Court summary that addressed victims' rights during an ex parte hearing. Judge Granville, from Maricopa County Supreme Court provided background information regarding the mitigation process and resulting decision. This decision had good language in it for victims' rights.

Morehart/Duffy v. Barton -The full opinion at:

http://www.azcourts.gov/Portals/23/pdf2011/CV100327PR.pdf

C. Approval of February 11, 2011 Minutes

Minutes from the February 11, 2011 Commission on Victims in the Courts meeting were presented for approval.

MOTION: To approve the February 11, 2010 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.*

II. Old Business

A. APAAC/Victim Identification Update

Elizabeth Ortiz explained that the Arizona Prosecuting Attorneys' Advisory Council (APAAC) is comprised of the Attorney General, the fifteen elected County Attorneys, several Chief City Court Prosecutors, the Administrative Director of the Arizona Supreme Court, and the Dean of the Sandra Day O'Connor School of Law. Judge Reinstein spoke at the APAAC meeting on April 1, 2011, regarding COVIC's victim identification protection recommendations. The APAAC members were very receptive to the information presented by Judge Reinstein, and instructed their Executive Director to work with various Council representatives to develop a "best practices" recommendation regarding how pleadings and other legal documents can be modified to protect victims' identities by utilizing initials. The best practices recommendation will be presented to the APAAC Council at its August 2, 2011, meeting.

III. New Business

A. APAAC/Victim notification and self-surrender

Patrick Scott from AOC presented a question and concern that he received through the "Court Answer Line" (where anyone in the court system can ask a question and we will find the answer). A person came into Justice Court on an arrest warrant for failure to appear and sought to have the warrant cleared up. The court heard the matter and set release conditions without contacting the victim.

How do various courts and law enforcement currently process a self-surrendering defendant and victim notification? What are the best practices and standards across the state?

Discussion:

- Persons who self-surrender should go specifically to law enforcement which
 would give time for the notification process to happen. When a self-surrender
 goes to the jail, they will call the prosecutor and then process through the
 system. Superior Court will get notices to quash a warrant. Once they have
 been booked into the jail, then the process of victim notification would happen.
- All committee members encouraged self-surrender in order to move cases forward within the court system. In one county alone, they currently pay approximately \$8,000,000 a year in jail board costs. With 3,000-4,000 people self-surrender a year, it's a big savings on \$200 a day in jail board costs.
- Give notice to all parties involved at "next" court event instead of an immediate
 decision on the day off surrender. It is important that Judges know that there is
 a victim in this case that needs notification. One Court puts a "code" on the bond
 amount that would identify that victim notification is needed. Judge can have a
 release discussion and give victim a chance to speak and with the possibility of
 modifying release.

Hon. Antonio Riojas, chair of the Limited Jurisdiction Court Committee (LJC) will bring this to the attention of LJC to develop recommendations at their August 31, 2011 meeting.

B. Psychiatric Review Board Information regarding victim notification

Judge Reinstein announced that Ms. Sydney Vivian, Executive Director for the Psychiatric Security Review Board plans to share information for procedures at the Psychiatric Review Board, at our September committee meeting. Judge Reinstein asked the committee if they had any questions in regards to "guilty, except insane" verdict and how crime victims are involved and/or notified as defendants proceed

through this type of sentence, to please send this information to Carol Mitchell. The following questions were presented:

- What triggers notification to victim when defendant is conditionally released when found guilty, except insane? What makes them eligible to go back into the community?
- Does the Review board have control over individuals that go to AZ State Hospital while in custody situations? Go from hospital to prison would they then be under civil commitment?
- Do we still have anyone whom might be considered temporarily insane and ok to be release? Since AZ law was changed to guilty, except insane we have seen no challenge to law. Guilty except insane, board reviews cases and eligibility to be released into the prison system.

C. Legislative Update

Jerry Landau, Director of Government Affairs shared an update from this legislative session:

- Ch 33 Budget reconciliation bill, Arizona Department of Corrections (ADC)/County Jail. The ADC will transfer those sentenced to 1 year or less or aggravated DUI to the county jail, this will take effect 7/1/12. Below is a list of questions that have been raised:
 - Who has control of inmate County Sherriff or ADC? Who is responsible for the notice to victims?
 - o If there's a violation of conditions, what happens at that time?
- Ch 58 Sexual conduct with a minor is a class 2 Felony if the offender was related, a teacher, or clergyman/priest.
- Ch 58 \$500 fee imposed on a person who is convicted of Dangerous Crimes against Children (DCAC) or Sexual Assault. This becomes effective January 1, 2012.
 - Assessment cannot be waived and is not subject to surcharge.
 - Money collected is used for the cost of medical expenses needed in the investigation of DCAC or Sexual Assault crime.
 - Forensic interview and medical expenses in order to secure evidence shall be paid by the county in which the offense occurred.
- Ch 173 Major project out of the Secretary of State (SOS) (based on a Colorado law) to establish a protected persons of database giving victims a separate address kept on file at the SOS offices. Voter registration & confidentiality to prohibit general public from accessing the address, telephone number and voting precinct number contained within information.

- Address Confidentiality Program (ACP) must be setup by December 31, 2012, the SOS has worked and will continue to work with the courts. \$50 assessment added on stalking, domestic violence and harassment cases in order to start the funding on this program, effective January 1, 2012.
- Ch 263 Courts now retain jurisdiction and enters criminal restitution order if defendant absconds from probation.
- Ch 296 \$50 assessment added for family offenses goes toward the domestic violence shelter fund. This is not subject to any additional surcharge.
- Ch 351 Juvenile DNA testing requirements (technical change)
 - o If a juvenile is charged with one of the enumerated offenses and is required to appear at an advisory hearing the investigating law enforcement agency must obtain a DNA sample for submission to the Department of Public Safety. It does not change the law, but brings the process more in line with current practice.
- A COVIC member indicated collections of DNA samples are way down around the state, which directly impacts cold cases and victims. DNA related surcharge is
 - Reduced by 1% effective January 1, 2012. Concerns were expressed that the lack of funding will reduce DNA samples being taken.
 - Some probation departments are committing funds to continuing collections.
- Ch 99 (SB1212) May have unintended logistical consequences for restitution where it worked for the Clerk of the Court to collect on restitution payments using the same CR number and the defendant.

D. Restitution/Financial Recovery Project

Judge Reinstein addressed an inquiry to Jerry Landau about whether Arizona can create a restitution project based on a federal program. The Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Texas utilizes their civil division to aggressively go after collection and execution of judgments on behalf of victims. They maximize restitution to victims by going after 401K plans, insurance proceeds, annuities, etc.

- Is this under the mandatory Restitution Act (federal act) or is it something that can be done here?
- Are there any impediments in the Arizona law?
- Can it be done here for County Attorneys or the Attorney General's office to assist victims in getting their restitution civilly once they are off probation or out of prison? Currently, what are our statutes? Jerry will speak with county attorneys.

Discussion:

- Mr. Dan Levey will talk to APAAC if available resources to research this also.
- Jim Belanger suggested county attorneys and/or courts should create an RFP to bid to collect restitution as a means to get money on behalf of victims.
- Jerry Landau commented that he has continued to encourage federal delegation to support interception of federal tax returns for restitution.
- David Sanders shared that in Pima County, if a defendant goes into arrears on restitution (60 days without any kind of payment) the county will assess a penalty of 28% on the amount still due. This has been very effective along with a Collections department. It's believed the Board of Supervisors provided probation the authority to asses this fee.
- Collections office within the Maricopa County Clerk's office that collects millions each year in fines, fees and restitutions.

IV. Workgroup Updates

A. Restitution Workgroup

The workgroup provided sample letters as part of a plan to develop written procedures to assist victims in filing documents related to restitution liens. Since more changes are expected, the final versions will be presented at the next meeting. The workgroup update concluded.

Dr. Cathy Coffman brought up an issue that could be addressed by both COVIC and the Committee on the Impact of Domestic Violence in the Courts (CIDVIC). When reviewing child fatality cases, it wasn't a clear if information regarding DV was being share with the court during custody proceedings. This issue may be referred to Kay Radwanski, Judge Finn and Judge O'Neil because of their expertise with domestic violence cases.

V. Call to the Public

Captain Larry Farnsworth talked about the statewide survey sent out to law enforcement agencies regarding service of protective orders. Maricopa Sheriff's Office is going to start taking orders of protection from JP, Municipal or Superior Court on the service of orders of protection via fax. Service of OP's will also be served in the jails. This service is in effort to make it easier for victims and they hope it will become a "best practice". If you would like to see the questions or would like a copy of the survey, please see Cpt. Farnsworth after the meeting.

VI. Adjournment

MOTION: To adjourn presented. *Motion seconded and passed unanimously.* The meeting adjourned at 12:02 p.m.